

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

Annual Report

Fiscal Year 2010

Pursuant to A.R.S. § 41-1051(F)

Submitted By:

Joseph Sciarrotta, Jr., Esq
Chairman

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THE GOVERNOR'S REGULATORY REVIEW COUNCIL

July 1, 2009 through June 30, 2010

The duties and responsibilities of the Governor's Regulatory Review Council (Council) are set forth in the Arizona Administrative Procedure Act (APA), A.R.S. § 41-1001 *et seq.*

COUNCIL RESPONSIBILITIES

Under the Arizona APA¹, the Council:

1. Reviews and approves or returns, in whole or in part, a rule, preamble, and economic, small business, and consumer impact statement submitted by an agency (A.R.S. § 41-1052(B));
2. Schedules a periodic review of each agency's rules and approves or returns, in whole or in part, the agency's report on its review (A.R.S. § 41-1056(B));
3. Receives reports of compliance with timeframe rules from agencies that issue licenses and report results to the governor, president of the senate, and speaker of the house of representatives (A.R.S. § 41-1078);
4. Receives and hears appeals regarding an agency's practice or substantive policy statement (A.R.S. § 41-1033(B));
5. Receives and hears appeals regarding the economic, small business, and consumer impact statement of an agency's rules (A.R.S. § 41-1056.01(D));
6. Receives and hears appeals regarding an agency delegation agreement (A.R.S. § 41-1081);
7. Receives certifications of compliance with A.R.S. § 41-1091 from all agency heads (A.R.S. 41-1091(D)); and
8. Receives reports from agencies regarding their progress toward completing the courses of action established in their five-year-review reports (A.R.S. § 41-1056(H)).

¹ Legislation passed during the 49th Legislature that modified and added to the Council's responsibilities. These changes took effect after June 30, 2010 and will be addressed in next year's annual report.

COUNCIL ACTIVITIES

1. Proposed Rules

Unless otherwise exempt, A.R.S. § 41-1052 requires an agency to submit and obtain Council's approval of a Notice of Final Rulemaking (rule package), which consists of a rule, preamble, and economic, small business, and consumer impact statement, before the rule package is filed with the Secretary of State. From July 2009 through June 2010, agencies submitted 19 Notices of Final Rulemaking for review and action by the Council. This number represents a decrease in rulemaking from the previous year (agencies submitted 74 Notices of Final Rulemaking in 2008-2009). The Council approved the 19 Notices of Final Rulemaking received from agencies during July 2009 through June 2010 that had been granted an exception under the executive and legislative rulemaking moratoriums.² In these 19 Notices of Final Rulemaking, the agencies repealed nine rules, made 23 new rules, amended 66 existing rules, and renumbered 8 existing rules, for a total of 106 rulemaking actions.³ This total compares with 783 rulemaking actions in 2008-2009.

In accordance with A.R.S. § 41-1051(F)(1), a list of agency rules approved by Council during fiscal year 2009-2010 is attached to this report as Appendix A.

2. Five-Year Review Reports

A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed and to summarize its findings in a report to Council. During fiscal year 2010, the Council received and approved 74 Five-Year Review Reports. These reports included agencies' reviews of 1,779 rules. In these reports, agencies determined that certain rules need to be repealed or amended, and provided the Council with a schedule of when the planned rulemakings likely would be completed.

3. Receive Reports on Progress Toward Completing the Courses of Action Established in Five Year Review Reports

A.R.S. § 41-1056(H) requires agencies to report on their progress toward completing the courses of action established in their Five-Year Review Reports.

Appendix B is a summary of the agencies' progress toward completion of those courses of action.⁴ The proposed courses of action contained in Appendix B are

² The Governor's rulemaking moratorium was extended by a legislative moratorium, Laws 2009, Third Special Session, Ch. 7.

³ Data include articles, sections, appendices, and tables.

⁴ Progress Reports for Five-Year Review Reports submitted to the Council from July 2005 to June 2010 are summarized in Appendix B.

described as: (1) Some Progress, or (2) No Progress. Agency activity is described as “Some Progress” where, at minimum, a Notice of Docket Opening was filed. Agency activity is described as “No Progress” where a Notice of Docket Opening has not yet been filed, or has expired.⁵ There are varying reasons or circumstances why progress has not yet been made that include budgetary constraints, significant statutory changes, or the moratorium. The actual reports are on file with the Council staff and are available for review.

4. Receive Reports of Compliance with Timeframe Rules

In accordance with A.R.S. § 41-1078(B), in November 2009 the Council submitted a report regarding agencies’ compliance with their timeframe rules during the 2008-2009 fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. This report also is located on the Council’s website.⁶

5. Receive and Hear Appeals Regarding (a) an Agency’s Practice or Substantive Policy Statement, (b) Regarding the Economic, Small Business, and Consumer Impact Statement of an Agency’s Rules, and/or (c) Regarding an Agency Delegation Agreement

Appeal of an Agency Delegation Agreement

No appeals were filed with the Council regarding an agency delegation agreement.

Appeal of an Agency Practice or Substantive Policy Statement

No appeals were filed with Council regarding an agency practice or substantive policy statement.

Appeal of an Agency Economic, Small Business, and Consumer Impact Statement

One appeal was filed with the Council regarding the Board of Physical Therapy’s economic, small business, and consumer impact statement. At least three Council members did not vote to hear the appeal, pursuant to A.R.S. §41-1033 (B), therefore the appeal was not considered by the Council.

⁵ Unless a specific number of rules are indicated, the descriptions “Some Progress” or “No Progress” in Appendix B apply to all rules for which amendment or repeal was planned, as discussed in the agency’s Five-Year Review Report.

⁶ In November 2010, the Council shall submit a report regarding agencies’ compliance with their timeframe rules during the 2009-2010 fiscal year.

6. Receive Certifications of Compliance with the Substantive Policy Statement Directory Requirement


A.R.S. § 41-1091 requires all agencies to publish annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The directory, rules, substantive policy statements, and any materials incorporated by reference must be kept in one location and open to public inspection. Under A.R.S. § 41-1091(D), an agency head is required to annually certify to the Council that the agency is in compliance with this requirement. For fiscal year 2010, all agencies required to submit A.R.S. § 41-1091 certifications satisfied their statutory obligation.

RESPONSIBILITIES OF COUNCIL STAFF

Council staff assists the Council members in meeting their statutory duties and responsibilities as outlined in Council Activities, Items 1 – 6 above. In addition, Council staff also provides a number of other professional services for the State of Arizona, including:

- (1) Providing “courtesy reviews” of draft rulemaking materials for over ninety Arizona State agencies;
- (2) Assist with preparing and submitting Council’s required reports;
- (3) Conducting monthly seminars for State agency personnel, to instruct and assist them with their rulewriting and reporting requirements;
- (4) Assisting agencies with any necessary revisions for Notices of Final Rulemaking and Five Year Review Reports placed on Council’s agenda;
- (5) Providing occasional assistance to the office of the Arizona Ombudsman-Citizens’ Aide in resolving rulemaking issues;
- (6) Overseeing the scheduling of two monthly meetings pursuant to the requirements of Arizona’s Open Meeting Law, A.R.S. § 38-431 *et seq.*;
- (7) Assisting the Arizona Department of Public Safety with writing administrative rules for Arizona’s school bus drivers and school buses, pursuant to the statutory directive set forth in A.R.S. § 28-900;
- (8) Conducting review and analyses of agencies’ statutes and administrative rules, to assist the Arizona Auditor General with its periodic reviews of agencies; and
- (9) GRRC staff are occasionally tasked with other assignments from the Assistant Director for Legal Services, Administrative Counsel on an as-needed basis.

Respectfully submitted this 4th day of October, 2010.



Joseph Sciarrotta, Jr., Esq.
Chairman